



robbery and one count of possession of firearm during a crime of violence. On October 3, 2002, he was sentenced to a term of 162 months imprisonment. Petitioner did not file a direct appeal.

On March 18, 2005, Petitioner filed a Motion to Vacate Under 28 U.S.C. § 2255 (Doc. 29). In an Order (Doc. 35) entered on April 19, 2005, this Court accepted the Magistrate Judge's Report and Recommendation (Doc. 32) and denied Petitioner's Motion to Vacate as untimely. Petitioner filed a Motion for Certificate of Appealability and Notice of Appeal (Doc. 37) from the denial of his Motion to Vacate, and on May 31, 2005, this Court denied his Motion for Certificate of Appealability. (Doc. 41.) The Eleventh Circuit also denied his Motion for Certificate of Appealability. (Doc. 50.)

On May 6, 2008, Petitioner filed his first Motion for Leave to File Motion to Vacate, Set Aside, or Correct Sentence Pursuant to 28 U.S.C. § 2255 Under the Mandates Pursuant to 28 U.S.C. § 2244(d)(1)(D) (Doc. 51). That Motion is identical to the Motion for Leave to File presently before the Court. On May 14, 2008, the Magistrate Judge issued an R&R that construed Petitioner's first Motion for Leave to File as a Motion to Vacate Under § 2255, addressed the merits of Petitioner's legal arguments, and recommended denying the Motion on the merits. Because the Magistrate Judge should have simply dismissed the construed Motion to Vacate as being a second or successive petition, this Court entered an Order (Doc. 56) on June 25, 2008, that rejected the R&R's reasoning and dismissed Petitioner's Motion to

Vacate as a second or successive petition. On December 18, 2008, the Eleventh Circuit construed Petitioner's Notice of Appeal (Doc. 60) as a Motion for Certificate of Appealability and denied the same.

On September 19, 2008, Petitioner filed his second Motion for Leave to File, which is presently before this Court. As stated above, this Motion is identical to the first Motion for Leave to file that was previously denied by this Court. On the same day, Petitioner filed an Amended Motion for Leave to File. In his Amended Motion, Petitioner asserts that it is "the [18 U.S.C. §] 924(c) enhancement that Petitioner wishes to litigate on as newly discovered evidence." (Doc. 65 at 2.) In the conclusion section of his Amended Motion, Petitioner refers to his Amended Motion and Motion for Leave to File as a "2244 request to [sic] leave to file a Successive Petition." (Doc. 65 at 6.)

On October 20, 2008, the Magistrate Judge issued an R&R on Petitioner's Motion for Leave to File and Amended Motion. This time, the Magistrate Judge construed Petitioner's Motions as being brought under 18 U.S.C. § 3582(c)(2) and denied them on the merits.

## **II. DISCUSSION**

This Court does not agree with the Magistrate Judge's construction of Petitioner's pro se Motions. The most reasonable construction of those Motions is that they are requests for leave to file a second or successive § 2255 petition. This Court, however, is not authorized to grant the relief Petitioner seeks. Only the

appropriate court of appeals is authorized to grant a petitioner leave to file a second or successive § 2255 petition. 28 U.S.C. § 2255(h). Petitioner's Motion for Leave to File and Amended Motion are therefore denied.

In addition, to the extent the instant Motions seek to have Petitioner's sentence vacated under § 2255, the Motions are dismissed for lack of jurisdiction. Absent authorization from the appropriate court of appeals, a district court does not have jurisdiction to consider a second or successive petition. 28 U.S.C. § 2244(b)(3)(A); Farris v. United States, 333 F.3d 1211, 1216 (11th Cir. 2003). Here, Petitioner has not obtained the requisite authorization to file a second or successive petition. Accordingly, the Motions before the Court are dismissed to the extent they seek to vacate, set aside, or correct Petitioner's sentence under § 2255(a).

### **III. CONCLUSION**

For the foregoing reasons, the R&R is adopted only to the extent it recommends denying Petitioner's Motion for Leave to File and Amended Motion.

**SO ORDERED**, this the 28<sup>th</sup> day of July, 2009.

**s/ Hugh Lawson**

**HUGH LAWSON, Judge**

dhc